REMARKS

Claims 1 – 2 are pending in the application.

Claims 1 and 2 have been rejected under 35 USC §102(e) as being allegedly anticipated by Muttik et al (US Patent No. 6,907,396).

Prior to discussing the rejection, a brief summary of the object of the invention is provided. The present invention is directed to a method of detecting malicious scripts using code insertion technique, in which relevant scripts can determine the presence of their own maliciousness without any external help upon the execution of the scripts, by inserting script codes capable of performing the self-detection before and after the original script. (See paragraph 0013 in present application). In stark contrast, Muttik et al. provides a method for emulating computer viruses or other malicious software that operates by patching additional instructions into an emulator in order to aid in the process of detecting, decrypting or disinfecting code containing a computer virus of other malicious software, more specifically, by loading emulator extension. In other words, Muttik teaches that the emulator extension is to be executed in the "malicious code" instead of the original script as in the claimed invention.

In making the rejection, the Examiner contends that Muttik et al. teaches the method of detecting malicious scripts as recited in claims 1 and 2 of the present invention. In particular, Examiner contends that Muttik et al teaches the step of "inserting a self-detection routine (malicious behavior detection routine) call sentence ***before*** and ***after*** a method call sentence of an original script, as recited in the claim. The Examiner relied on column 4, lines 53-63 of Muttik et al which states that the "emulator extension 204 can be executed before the

suspect code 108 is executed..." and on column 5, lines 1-3 of Muttik et al. '396 which states that the "emulator extension 204 can be emulated after the suspect code 108 is emulated..." to support this rejection. However, inserting the emulator extension 204 can be executed before the suspect code 108 is executed and emulating the emulator extension 204 after the suspect code 108 is emulated is not the same as inserting a self-detection routine (malicious behavior detection routine) call sentence **before** and ***after*** a method call sentence ***of an original script***, as recited in the claim. Therefore, not only does Muttik et al. disclose a substantially different method of detecting malicious scripts using insertion, but Muttik fails to teach of suggest inserting a self-detection routine (malicious behavior detection routine) call sentence **before** and ***after*** a method call sentence ***of an original script***, as recited in the claim.

As is well settled, anticipation requires "identity of invention." *Glaverbel Societe Anonyme v. Northlake Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). There must be no differences between what is claimed and what is disclosed in the applied reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967); *Scripps v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). "Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990). The Examiner is required to point to the disclosure in the reference

"by page and line" upon which the claim allegedly reads. *Choing v. Roland*, 17 USPQ2d 1541, 1543 (BPAI 1990). "Anticipation of a claimed product cannot be predicated on mere conjecture as to the characteristics of a prior art product." *Ex parte Standish*, 10 USPQ2d 1454, 1457 (BPAI 1989). That the claimed product "could" result from the process disclosed in the applied reference, is insufficient to support a conclusion that it will inherently result, and insufficient to support a conclusion that what is claimed in anticipated. *Glaxo Inc. v. Novopharm Ltd.*, 34 USPQ2d 1565, (Fed. Cir. 1995).

Accordingly, since Muttik does not teach and the Examiner *fails* to show where in Muttik et al it is taught or suggested that a routine call sentence be inserted before *and* after a method call sentence of an original script in order to detect a malicious scripts, as required by the claims. In view of the foregoing, it is respectfully requested that the rejection under 35 USC §102(e) be reconsidered and withdrawn.

In the Office Action, Claim 1 has also been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Bond et al. (US Patent No. 6,275, 938). As with Muttik discussed above, Bond et al. does not specifically teach or suggest a method wherein a self-detection routine (equal to Bond's check or sniff code) is inserted ***before*** *and* ***after*** a method call sentence of an original script as required in Claim 1. Instead, the method described in Bond, in particular Step 423 "*inserts* check code ***into*** the applet's own code to enforce prohibition against disallowed memory references." (See Bond, column 7, lines 17-41). In other words, the check code in Bond et al is inserted ***within*** the sequence, unlike the

claimed invention where the self-detection routine is inserted ***before*** *and* ***after*** a method call sentence of an original script.

Moreover, as indicated at page 3 of the present application, inserting self-detection routines *within* the sequence in order to detect malicious behavior leads to a high rate of false negatives, a problem that the present invention is designed to overcome.

Accordingly, in view of the forgoing remarks, it is respectfully submitted all claims pending herein are in condition for allowance. Please contact the undersigned attorney should there be any questions. A petition for an automatic one-month extension of time for response under 37 C.F.R. §1.136(a) is enclosed in triplicate, together with the requisite petition fee and fee for the additional claims introduced herein.

Early favorable action is earnestly solicited.

Respectfully submitted,

DILWORTH & BARRESE, LLP
333 Earle Ovington Boulevard
Uniondale, New York 11553
Tel. No. (516) 228-8484
Fax No. (516) 228-8516

Leo G. Lenna
Registration No.: 42,796
Attorney for Applicants